IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 128 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHRI UMIYA CLEANING CORPN

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 128 of 1988
MR KA PUJ for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following question has been referred for our opinion in respect of assessment year 1981-82 :-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the sole activity of the assessee of cleaning jeera and variali cannot be held to be a manufacturing activity so as to entitle the assessee to claim deduction u/s. 32(A) of the Act?"

2. We have heard Mr KA Puj, learned counsel for the assessee and Mr BB Naik, learned counsel for the revenue.

3. The learned counsel for the assessee submitted that the process employed by the assessee is cleaning and cutting jeera and saunf and that the assessee was carrying out this process with machines and, therefore, the activity was certainly a manufacturing and production activity bringing a new article into existence and, therefore, the assessee was entitled to investment allowance under Section 32A of the Act.

4. On the other hand, Mr Naik submitted that the Tribunal has examined the claim and given a finding of fact that cleaning and cutting of jeera and saunf does not amount to any manufacturing activity as no new commercial article is being brought into existence.

5. Having heard the learned counsel for the parties, it appears to us that when the assessee is only carrying out the activity of cleaning and cutting jeera and saunf without bringing into existence any new commercial article, no fault can be found with the finding given by the Tribunal that the assessee was not carrying on any manufacturing activity within the meaning of Section 32A of the Income-tax Act, 1961. We accordingly answer the question in the affirmative i.e. in favour of the revenue and against the assessee.

6. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-